SEAPOWER (M) SDN. BHD.

v.

HOTEL AMBASSADOR (M) SDN. BHD.

HIGH COURT MALAYA, PINANG
WAN ADNAN J
[ORIGINATING SUMMONS NO. 24-113-90]
23 MAY 1990

CIVIL PROCEDURE: *Summary procedure - Recovery of possession - Holding over termination of tenancy - Option to renew not exercised - Order 89 Rules of the High Court 1980.*

The plaintiffs S bought a piece of property known as "the Ambassador Hotel" at a public auction; the previous owner of the said property had granted a lease to H for 10 years from 1966 with an option to renew. This lease was duly registered. On the expiry of the ten year term H remained in occupation until the present moment but no new lease was executed nor registered. The previous owner sent a notice to quit to H. As a result of H's failure to comply with the notice, S filed an application under O. 89 of the Rules of the High Court 1980 (RHC) to recover possession of the premises. H claimed that they were the lawful lessees of the property.

Held:

[1] It is clear that H went into occupation of the property with the consent of the previous owner; although H did not renew the registered lease, they remained in occupation and paid rentals up to February 1984 - since no new lease was registered, H were at the worst the monthly tenant in respect of the property.

[2] When the notice to quit was served on them, H continued to remain in occupation, the defendants were therefore as from the expiry of the notice a tenant holding over after the termination of the tenancy.

[3] When S became the new owner they acquired all and whatever remedies the previous owner had against H in respect of the tenancy; S cannot have more rights and remedies against H than the previous owner had at the date S became the new owner. The position of H was not changed as against the new owner. The fact that the tenancy was not protected by any endorsement did not alter the position as at that date the tenancy had already been determined. Accordingly summary procedure under O. 89 does not apply.

[Plaintiff's application dismissed.]

Legislation referred to:
Rules of the High Court 1980, O. 89

For the plaintiffs - Lim Jit Boo with Khaw Cheow Poh; M/s. JB Lim & Suhaimi
For the defendants - Annamalai; M/s. Annamalai & Co.

JUDGMENT

Wan Adnan J:

This is an application by the plaintiffs to recover possession of the premises known as "the Ambassador Hotel" (the property) occupied by the defendants through the summary procedure under O. 89 of the Rules of the High Court.

The property was purchased by the plaintiffs at a public auction held on 26 July 1989 pursuant to an order of sale made in Penang High Court Originating Summons No. 777 of 1985. The certificate of sale in Form 16F was issued by the Senior Assistant Registrar on 8 December 1989 and on 21 December 1989 the plaintiffs became the registered owner of the property.

The defendants had been carrying on the business of hoteliers at the property under the name and style of Hotel Ambassador since 1966. The previous owner of the property had granted to the defendants a lease thereof initially for a period of ten (10) years from 22 March 1966. The lease was duly registered *vide* Lease Volume 1 Folio 39 Presentation No. 472. The monthly rent was RM11,000. Under Clause 4(e) of the annexure to the lease the defendants had the option to renew the lease for another period of ten (10) years at the monthly rent of RM12,000 and then for a further period of 10 years at the monthly rent of RM13,000. On the expiry of the first ten-year term no new lease was executed and registered but the defendants continued to remain in occupation and are still in occupation. The renewal must have been agreed to by the previous owner as in High Court Civil Suit No. 22-287-89 the owner filed a claim against the defendants for the recovery of the arrears of rentals from the month of March 1984 till 31 May 1989 amounting to RM756,000. There was also a claim for vacant possession. It was alleged in the statement of claim that on 28 April 1989 a notice to quit had been sent to the defendants. In their defence the defendants *inter alia* disputed the validity of the notice.

By notice dated 20 November 1989 the plaintiffs required the defendants to deliver vacant possession of the property within 14 days of the date of receipt of the said notice. By notice dated 1 February 1990 the plaintiffs gave the defendants another notice requiring the defendants to quit and deliver vacant possession on or before 15 February 1990. The defendants did not comply with the notice. Hence this application.

At the outset of the hearing Counsel for the defendants submitted as a preliminary point that the summary procedure under O. 89 is not available to the plaintiffs in the circumstances of the case. I agreed and dismissed the application with costs. Hence this appeal.

Order 89(1) states as follows:

> 1. Where a person claims possession of land which he alleges is occupied solely by a person or persons (not being a tenant or tenants holding over after the termination of the tenancy) who entered into or remained in occupation without his licence or consent or that of any predecessor in title of his, the proceedings may be brought by originating summons in accordance with the provisions of this order.

The defendants claim that they were lawful lessees in respect of the property. The plaintiffs contend that by virtue of Clause 12 of the condition of sale they are legally entitled to possession of the property. Clause 12 reads as follows:

> 12. The completion date ... code. Upon payment of the balance money the purchaser shall be let into possession or the receipt of rents and profits of the properties ...

They also contend that the lease to the defendants was not registered and was therefore void and that if there was any tenancy in favour of the defendants, the tenancy was not protected by an endorsement as required by the provisions of the National Land Code.

It is clear that the defendants went into occupation of the property with the consent of the previous owner. There was a registered lease for a term of ten (10) years. After the expiry of the term the defendants remained in occupation. The defendants must have exercised the

options to renew the lease as provided in the registered lease and had paid the rentals up to the month of February 1984. Since no new lease was registered the defendants were at the worst the monthly tenant in respect of the property. When notice to quit dated 28 April 1989 was served on them the defendants continued to remain in occupation. The defendants were therefore as from the expiry of the notice a tenant holding over after the termination of the tenancy.

At the time when the plaintiffs became the new owner of the property on 21 December 1989 the defendants had already become "a tenant holding over after the termination of the tenancy". The tenancy had been determined by the previous owner. A claim for recovery for vacant possession was then filed against the defendants. When the plaintiffs became the new owner they acquired all and whatever remedies the previous owner had against the defendants in respect of the tenancy. The plaintiffs cannot have more rights and remedies against the defendants in respect of the tenancy than what the previous owner had at the date the plaintiffs became the new owner. At that date the defendants were a tenant holding over as against the previous owner. The position of the defendants was not changed as against the new owner. The fact that the tenancy was not protected by any endorsement, in my view, did not alter the position as at the date the tenancy had already been determined.

I find that the defendants were a tenant holding over after the termination of the tenancy. The summary procedure under O. 89 does not apply. That application is dismissed with costs.

Also found at [1990] 2 CLJ 1042